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### California Amendments to Venture Capital Diversity Reporting Law



In 2023, California enacted the Fair Investment Practices by Investment Advisers Act (FIPIA or the Act)<sup>[1]</sup> requiring venture capital companies (VCCs) to report annually to the state on the diversity composition of the founding teams of the startup companies in which they invest.

The law, which was intended to increase transparency and accountability in the venture capital industry, applies to VCCs that meet both a business criterion as financing startups, early-stage, and emerging growth companies, as well as a California nexus criterion. It also imposed fees, penalties, and enforcement actions for noncompliance.

In 2024, the state of California amended the FIPIA through SB 164.<sup>[2]</sup> These amendments primarily aim to align the scope of VCCs covered under the law with the type of investors the law was intended to address, and they extend the timing of the reporting requirements and transfer the oversight and administration of the law from the California Civil Rights Department to the Department of Financial Protection and Innovation (DFPI). Although SB 164 repeals SB 54, much of the SB 164 text remains the same.

The main substantive changes introduced by the amendments are as follows:

- The first reporting deadline for VCCs is extended from March 1, 2025, to April 1, 2026. VCCs must attempt to collect the required information from the founding team members of the businesses in which they make venture capital investments beginning January 1, 2025.
- VCCs must report and maintain as current the name, title, and email address of the person serving as the designated point of contact for the covered VCC to the DFPI starting March 1, 2026.
- The application of the Act for VCCs is narrowed to only include those that primarily engage in the business of investing in or providing financing to startup, early-stage, or emerging growth companies. The amendments also eliminated the previous criterion that encompassed VCCs that manage assets on behalf of third-party investors, regardless of their investment focus, such as pension funds. Whether family

offices will be subject to the reporting requirements remains unclear and would likely depend on the nature of the office's business (*i.e.*, whether its activities fall within the new definition of VCC). Corporate VCCs, however, appear to remain subject to the reporting requirements.

- The definition of a founding team member is narrowed down and primarily includes the chief executive officer or president of the business, in addition to those who owned initial ownership interests or contributed conceptually or developmentally to the business before such initial shares were issued and were not passive investors.
- The backup data for reports must be preserved for at least five (rather than four) years after the report is delivered.

Notably, the amendments do not change the content of the information VCCs must report, including whether founding team members self-identify as diverse and the quantity and amount of investments made to businesses primarily founded by diverse founding team members.

These amendments also include clearer guidance on reporting and enforcement under the DFPI. VCCs must use a standardized survey form provided by the DFPI (not yet available) to collect information from each founding team member and provide a written disclosure to each founding team member that states (1) their participation in the survey is voluntary; (2) no adverse action will be taken against them if they decline to participate; and (3) the aggregated data will be reported to the DFPI. Survey results must be collected and reported in a manner that disassociates the responses from individual founding team members. When providing the collected information to the DFPI, VCCs should anonymize, to the extent possible, the information collected from founding team members. The form of the survey to be used for these purposes has not yet been provided to the public.

The DFPI will make the reports received from VCCs readily accessible, easily searchable, and easily downloadable on its website. [3] The DFPI may also publish aggregated data from the survey results and use the information in a civil action under any law.

When submitting a report to the DFPI, VCCs must pay a fee of at least \$175 per report, adjusted as necessary to meet the reasonable costs of administering the law. If a VCC fails to timely file, possible penalties range from \$5,000 and other fees to higher amounts for reckless or knowing violations of the Act.

The DFPI also has investigative powers to require VCCs to produce documentary material, file written reports or answers to questions, and make public or private investigations and publish information concerning any violations of the law. The DFPI may also make, amend, and rescind any rules, forms, and orders as needed to carry out the provisions of the law.

To effectuate the bill, it has been reported that DFPI is expected to receive a one-time budget of approximately \$1.6 million and three positions for hire for purposes of the Act.[4]

Companies should review their investment activities to determine whether they are subject to the Act and its reporting requirements and continue to monitor the DFPI's website for updates on the survey form and other guidance. Contact experienced counsel with any questions or concerns regarding the Act and its implications for your business.

## Endnotes

[1] See S.B. 54, 2023 S., Reg. Sess. (Cal. 2023); *see also* Arman Pahlavan and Andy Wang Shawber, [SB 54 Increases Transparency in California's Venture Capital Industry](#), Perkins Coie (Nov. 2, 2023), (discussing the scope and effect of SB 54).

[2] See S.B. 164, 2024 S., Reg. Sess. (Cal. 2024).

[3]See generally [Dep't of Fin. Prot. and Innovation](#), (last visited Oct. 3, 2024).

[4]Dep't of Fin., Exec. Off. of the Governor, *Department of Financial Protection and Innovation*, in Budget of California, Fiscal Years 2024-2025 (2024).

## **Authors**

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